IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7770 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOTILAL L KABRA - Petitioner(s)
Versus
UNION OF INDIA & 2 - Respondent(s)

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Appearance :
MR KR DIXIT for Petitioner No(s).: 1.
NOTICE SERVED for Respondent No(s).: 1,3.
MR MANISH R BHATT for Respondent No(s).: 2.

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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 26/07/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 This petition under Article 226 of the Constitution of India seeks to challenge order dated 3/6/2003 (Annexure-A) with further prayer to quash the direction in the said order dated 3/6/2003 issued to Tax Recovery Officer to levy further interest.

2 On 11.5.2005 when the petition came up for hearing, after hearing learned Advocate for the petitioner Mr.K.R.Dixit, notice was issued by the Court on the limited issue as to whether interest on outstanding interest could be levied by the department in light of Provisions of Section 245D(6A) of the Income Tax Act,1961. The respondents with special reference to respondent Nos. 2 and 3 have appeared through Mr.M.R.Bhatt, learned Senior Standing Counsel. In the Affidavit-in-Reply dated 27/6/2005 sworn by respondent No.2 the following averment is made :

> "[8] With reference to Paragraph 12 & 13 it is submitted that on verification of the records, the contention of the assessee is found to be correct but, there is no major variation in tax amount because tax on total income is Rs.81,65,198/- and

including interest u/s.234B&C total demand is of Rs.86,50,913/-. Hence, contention of the petitioner cannot be fully acceptable".

3 Thereafter, the petitioner has filed Affidavit-in-Rejoinder dated 6/7/2005 wherein the petitioner has given calculation of interest that is chargeable under Section 245D(6A) of the Act amounting to Rs.9,34,698/-. It is further submitted in the Affidavit-in-Rejoinder that the respondents have wrongly claimed excess interest of Rs.1,73,551/-. This averment also appears in paragraph No.13 of the petition, and which has been accepted as correct statement in the Affidavit-in-Reply as already noticed.

4 In light of the aforesaid factual position and considering the fact that the controversy between the parties is very limited and in absence of any dispute on facts, with the consent of the learned Counsel for the respective parties the petition is taken up for final hearing and disposal today. Rule returnable today. Mr.M.R.Bhatt waives service.

5 At the time of hearing Mr.Bhatt has placed on

record a Xerox copy of communication bearing No.ITO/ABD/Wd-2(4)/SCA/MLK/2005-06 dated 18/7/2005 addressed by respondent No.2 to Mr.Bhatt. Paragraph Nos. 1 & 5 of the said communication read as under :

> "1. The calculation of interest as shown by the assessee is checked and found to be correct. The mistake will be rectified accordingly.
>
> 2.xxx xxx xxx
>
> 3.xxx xxx xxx
>
> 4.xxx xxx xxx
>
> 5. Accordingly, A.O. has charged interest in a correct way u/s.245D(6A) instead of earlier wrongly charged u/s.220(2), mistake in calculation will be rectified as stated at 1 above".

In light of the aforesaid communication it is clear that the respondent authorities have accepted that firstly, there was an error in calculation of interest; and secondly, that interest amounting to Rs.1,73,551/-, being the interest on interest, was wrongly levied. In these circumstances, the respondent authorities are directed to rectify the mistake as accepted in paragraph No.1 of the communication dated 18/7/2005 and not to levy interest to the tune of Rs.1,73,551/- being interest

on interest in light of clear provisions of Section 245D(6A) of the Act.

6 The petition is accordingly allowed to the aforesaid extent. Rule made absolute accordingly. There shall be no order as to costs.

Sd/-

(D.A.Mehta, J)

Sd/-

(H.N.Devani, J)

m.m.bhatt